neither his later insanity, nor a later adjudication of insanity, will deprive the court of jurisdiction to adjudge him bankrupt.[11]

M. E. H.

CONSTITUTIONAL LAW: ACT TO REGULATE COMMERCE: CONSTRUCTION AND VALIDITY OF AMENDED LONG-AND-SHORT-HAUL CLAUSE (FOURTH SECTION).—The first authoritative construction of the Long-and-Short-Haul Clause (fourth section) of the Act to Regulate Commerce as amended in 1910[1] is afforded by the long-awaited decision of the United Supreme Court in the Intermountain Cases,[2] *United States v. Atchison, Topeka & Santa Fe Railroad Company.* The court finds the section constitutional and sustains the construction placed upon it by the Interstate Commerce Commission.[3]

The essentials of the original Act to Regulate Commerce are largely English in origin. The second section is modeled upon the Equality clause of the English Railway Consolidation Act of 1845.[4] The prototype of the third section is the Undue Preference clause of the Railway and Canal Traffic Act of 1854.[5] The genesis of these provisions determines their interpretation, since, upon well-settled principles of statutory construction, the adoption by the law-making branch of the legislation of another jurisdiction comprehends the judicial interpretation theretofore impressed upon such legislation in the place of its origin.[6] Accordingly, the English decisions construing the Equality and Undue Preference clauses have been determinative of the construction of the second and third sections of the act.[7] The fourth section which, in its original form prohibited the exaction of a greater charge for a shorter than for a longer haul over the same line in the same direction "under substantially similar circumstances and conditions", has no specific correlative in the English legislation. Inasmuch, however, as the clause was designed to forbid a particular form of discrimination between localities, condemned in more general terms by the preceding sections, it received a corresponding construction. It was accordingly held by the Supreme Court, following English precedents, that the prohibitions of the fourth

---

[11] Re Pratt (1872), 2 Low. 96, No. 11371 Fed. Cas.; Re Weitzel (1876), 7 Biss. 289, No. 17365 Fed. Cas.

[1] 36 Stat. at L. 547, 1911 U. S. Comp. Stat. Supp. 1288.

[2] (June 22, 1914), 234 U. S. 476, 34 Sup. Ct. Rep. 986.

[3] R. R. Com. of Nevada v. S. P. Co. (1911), 21 I. C. C. 329; City of Spokane v. Northern Pac. Ry. Co. (1911), 21 I. C. C. 400.

[4] 8 and 9 Vict. Cap. 20, § 90; 3 Boyle & Waghorn, pp. 148, 179.

[5] 17 and 18 Vict. Cap. 31, § 2; 3 Boyle & Waghorn, p. 202.

[6] McDonald v. Hovey (1884), 110 U. S. 619, 28 L. Ed. 269, 4 Sup. Ct. Rep. 142; I. C. C. v. B. & O. R. R. Co. (1892), 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. Rep. 844.

[7] I. C. C. v. B. & O. R. R. Co., supra; T. & P. Ry. Co. v. I. C. C. (1896), 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. Rep. 666.

section were operative only when the traffic was carried "under substantially similar circumstances and conditions", and that competition prevailing at the more distant point and not existing at the intermediate point brought about the dissimilarity of circumstance and condition which justifies a departure from the Long-and-Short-Haul principle.[8] Competition with other carriers, rail[9] or water,[10] as well as competition of markets,[11] alike sufficed to justify the departure. It was further held that the existence of the stipulated conditions warranted the carrier in maintaining higher rates for the shorter than for the longer haul upon its own initiative, without securing the prior sanction of the Interstate Commerce Commission.[12]

The wide-spread conviction that the construction thus impressed upon the section served to defeat its purpose led to the amendment of 1910, the most significant change being the omission of the phrase "under substantially similar circumstances and conditions". Therefore, the prohibition against maintaining a greater charge for the shorter than for the longer haul became absolute in form, qualified only by authority vested in the Interstate Commerce Commission to grant relief in special cases and to "prescribe the extent of such relief". This amendment became effective at a time when complaints were pending before the Interstate Commerce Commission in behalf of various intermountain communities[13] (notably Reno, Nevada, Spokane, Washington, and Phoenix, Arizona), protesting against the maintenance of higher west-bound transcontinental rates to those points than were contemporaneously accorded to San Francisco and other Pacific Coast terminals. These cases were consolidated for purposes of decision with the applications filed by the transcontinental lines under the amended fourth section for authority to continue in effect lower

---

[8] I. C. C. v. Alabama Midland Ry. Co. (1897), 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. Rep. 45.

[9] E. T. V. & G. Ry. Co. v. I. C. C. (1901), 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. Rep. 516.

[10] I. C. C. v. Alabama Midland Ry. Co., supra; L. & N. R. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. Rep. 209.

[11] E. T. V. & G. Ry. Co. v. I. C. C., supra, 45.

[12] I. C. C. v. Alabama Midland Ry. Co., supra; E. T. V. & G. Ry. Co. v. I. C. C. supra. This view was in conformity with the initial holding of the Interstate Commerce Commission (In re Louisville & Nashville R. R. Co. (1887), 1 I. C. C. 31, I. C R. 278). The commission finally reversed its early decision and held that in no case might the carrier disregard the fourth section without the prior sanction of the commission. (R. R. Com. of Ga. v. Clyde S. S. Co. (1892), 5 I. C. C. 324, 4 I. C. R. 120.) This position was not abandoned until a series of reverses had been suffered, culminating with E. T. V. & G. Ry. Co. v. I. C. C., supra.

[13] R. R. Com. of Nevada v. S. P. Co., supra; City of Spokane v. Northern Pac. Ry. Co., supra; Maricopa County Com. Club v. Santa Fe, Prescott & Phoenix Ry. Co. (1911), 21 I. C. C. 329.

rates at Pacific terminals than at interior points. The order finally entered by the commission denied the carriers all relief from the restraints of the fourth section with respect to traffic between the Missouri River and the Pacific Coast, but authorized the maintenance of rates from zones lying to the eastward of the Missouri River which should be lower to the terminals than to intermediate points. Under this authority a fixed relationship was prescribed between the rates to the intermediate and terminal points, the relationship varying with the zones of origin.[14] This order was attacked by the transcontinental carriers upon the grounds, *inter alia*, first that the amended fourth section was wanting in due process and, therefore, obnoxious to the Fifth Amendment; second, that the provision represented an unconstitutional delegation of legislative power; and, third, that the commission's construction of the provision was erroneous. The Commerce Court held the section constitutional but enjoined the enforcement of the order upon the ground that the commission had exceeded its powers in prescribing a fixed relationship between terminal rates (which, presumably, reflect the varying force of water competition) and intermediate rates, which are immune to the direct influence of water competition.[15]

The Supreme Court now holds all objections to the order of the commission invalid. The contention that the clause as amended represents an unconstitutional delegation of legislative power is met with the holding, first announced by the commission, that the commission's authority is not unrestrained, but that it must administer its power in accordance with the principles embodied in other provisions of the act. The court finds nothing objectionable in conferring upon the commission "a primary instead of a reviewing function". The argument that the inflexible character of the prohibition is wanting in due process is answered by the decision in Louisville & Nashville Railroad Company v. Kentucky,[16] in which the court sustained a long-and-short-haul provision of the Kentucky statute which was absolute in its requirements. The court holds finally that the commission did not exceed the limits of the discretion entrusted to it under the amended fourth section by establishing a fixed relationship between the rates to terminal and intermediate points.

It would seem that the result reached by the court is not open to criticism upon constitutional grounds. The legislative authority may competently adopt measures designed to eradicate discrimination in the rate structures of common carriers, and constitutional guarantees are not invaded by investing an administrative tribunal with power to prescribe the extent to which variations from the

---

[14] Ibid.
[15] A. T. & S. F. Ry. Co. v. U. S. (1911), 191 Fed. 856.
[16] (1902), 183 U S. 503, 46 L. Ed. 298, 22 Sup. Ct. Rep. 95.

fundamental principle may be permitted. If the absolute prohibition in the Kentucky statute against the exaction of greater charge for the shorter than for the longer haul is not wanting in due process, *a fortiori* a prohibition which is qualified by authority reposed in an administrative tribunal to grant relief in special cases would seem entirely valid. Even if it appeared that the conditions upon which the commission granted relief were subject to legitimate criticism, it would seem that all such objections are properly to be addressed to the discretion of the commission rather than the court.

A. P. M.

CONSTITUTIONAL LAW: DUE PROCESS OF LAW: ACT TO REGULATE COMMERCE: VALIDITY OF ACT OF CONGRESS DECLARING PIPE LINES COMMON CARRIERS.—The Act to Regulate Commerce, as amended in 1906, extends the jurisdiction of the commission over corporations or persons engaged in the transportation of oil or other commodity (excepting water and gas) "by means of pipe lines . . . . who shall be considered and held to be common carriers within the meaning and purpose of this Act".[1] Pursuant to this authority, the Interstate Commerce Commission ordered various companies owning pipe lines which were employed in the transportation of oil to file their schedules of rates.[2] The Commerce Court enjoined the enforcement of the commission's order, holding the statute obnoxious to the Fifth Amendment.[3] The United States Supreme Court has now reversed the Commerce Court and has allowed the commission's order to become effective in *United States v. Ohio Oil Company.*[4]

There can be no doubt that pipe line companies which have employed their facilities in the transportation of oil for the public generally, have acquired the status of common carriers.[5] It does not follow, however, that pipe lines which have never been dedicated to public use may be impressed into public service by mere legislative declaration. It is a fundamental concept that public service cannot be compelled, but that, on the contrary, "the service is voluntarily assumed". More specifically, the extraordinary obligations incident to a public calling attach solely as a result of a tender of public service. This tender may be either express or implied. Common practice or a public advertisement evidences an explicit "holding out".[6] The exercise of the governmental

---

[1] 34 Stat. at L. 584, ch. 3591, 1907 Comp. Stat. Supp. (N. S.) 892.
[2] In the Matter of Pipe Lines (1912), 24 I. C. C. 1.
[3] Prairie Oil & Gas Co. v. U. S. (1913), 204 Fed. 798.
[4] (1914), 34 Sup. Ct. Rep. 956.
[5] West Va. Transp. Co. v. Volcanic O. & C. Co. (1872), 5 W. V. 382; Giffin v. S. W. Pa. Pipe Lines (1896), 172 Pa. St. 580, 33 Atl. 578.
[6] Munn v. Illinois (1876), 94 U. S. 113, 24 L. Ed. 77; Ingate v. Christie (1850), 3 C. & K. 61; Sears v. Eastern R. R. Co. (1867), 14 Allen 433, 92 Am. Dec. 780.